

# CALIFORNIA FRANCHISE TAX BOARD

Legal Ruling No. 088

June 25, 1958

## EXCLUSIONS: FROM GROSS INCOME

### Syllabus:

Where a private corporation, whose stock is owned by a municipality, has pledged its revenue to a third party, who is directed to pay (a) operating expenses; (b) loans; (c) bond obligations; and (d) the corporation is to dissolve when all securities are retired or repaid, the corporation receives no taxable income.

Taxpayer, a private corporation, was organized to obtain a lease of municipally-owned property for public parking purposes. A 50-year lease was obtained which provided that upon termination of the lease the parking lot would be owned by the city. All common stock was issued to the city. Also issued were a number of shares of 6% cumulative preferred stock. A construction loan was obtained from the Reconstruction Finance Corporation. After the lot was completed taxpayer subleased the garage for a period of 25 years to a privately-owned corporation. The sublessee was required to pay all expenses of the taxpayer and a sufficient amount to retire all indebtedness of the taxpayer within 25 years. Taxpayer later issued debentures to provide funds to refinance the preferred stock. Pursuant to the trust indenture a bank was appointed trustee for the benefit of the debenture holders. The trust indenture assigned to the trustee all receipts of the taxpayer to be used solely for payment of expenses, repayment of the indebtedness to the Reconstruction Finance Corporation, and redemption of the debentures. It further provided that when all the indebtedness is paid the trust shall end, the taxpayer shall be dissolved, and direct ownership of its assets shall vest in the city. Advice is requested whether taxpayer receives any taxable income.

The facts in Keokuk and Hamilton Bridge, Inc. v Commissioner, 180 F 2d 58 and this case are in all material respects the same. Each is a private corporation; their stock is owned by a municipality; each pledged its revenue to a third party who is directed to pay (a) operating expenses; (b) loans; (c) bond obligations; and (d) each organization is to dissolve when all securities are retired or repaid. The decision in the Keokuk case was reached by applying a fundamental principle of taxation, i.e., income is not realized when the taxpayer has no right thereto nor any beneficial interest therein. Accordingly, taxpayer received no taxable income. It is, nevertheless, subject to the minimum tax, as it is not expressly exempted from the Bank and Corporation Tax Law.